

Senate Bill No. 1428

Passed the Senate August 31, 2006

Secretary of the Senate

Passed the Assembly August 24, 2006

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2006, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add and repeal Section 679 of the Unemployment Insurance Code, relating to unemployment insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1428, Scott. Unemployment compensation: employer: motion picture industry.

Existing law requires that the determination of the employer-employee relationship be made pursuant to common-law principles, with specified exceptions. Existing law provides that when an individual or entity contracts to supply an employee to perform services for a customer or client, and is a leasing employer or a temporary services employer, as defined, the individual or entity is the employer of the employee who performs the services, provided that certain requirements are satisfied.

This bill would provide that, notwithstanding those provisions and until January 1, 2012, any employing unit that is a motion picture payroll services company, as defined, shall be treated as an employer of a motion picture production worker, as defined. This bill would require any employing unit operating as a motion picture payroll services company to report that status to the Employment Development Department. This bill would also require any employment unit operating as a motion picture payroll services company that quits business, to file with the director, a final return and report of wages, as provided, and to notify the motion picture production companies and allied motion picture services of its intent to quit business, as provided. This bill would also provide that the employing unit's status would be applied to its affiliated entities, as defined, and would require specified actions by those affiliated entities and the motion picture payroll services company when acquired or created by the motion picture payroll services company. This bill would also require the director to notify an entity, as provided, that does not satisfy the requirements of a motion picture payroll services company, as provided, of the facts and circumstances upon which the determination was made.

This bill makes statements with regard to its impact on employing units who do not elect to be considered motion picture payroll services companies.

The people of the State of California do enact as follows:

SECTION 1. Section 679 is added to the Unemployment Insurance Code, to read:

679. (a) Notwithstanding Sections 606.5, 621, and 678, for the purposes of this code, “employer” means any employing unit that is a motion picture payroll services company who pays and controls the payment of wages of a motion picture production worker for services either to a motion picture production company or to an allied motion picture services company. The motion picture payroll services company must also have filed a timely statement of its intent to be the employer of motion picture production workers pursuant to subdivision (b).

(b) (1) Any employing unit meeting the requirements of a motion picture payroll services company, as defined by this section, that intends to be treated as an employer of motion picture production workers pursuant to subdivision (a) shall file a statement with the department that declares its intent to be the employer of motion picture production workers, pursuant to this section, within 15 days after first paying wages to the workers. The statement shall include identification of all affiliated entities as defined by this section.

(2) Any employing unit operating as a motion picture payroll services company as of January 1, 2007, that intends to be treated as an employer of motion picture production workers pursuant to this section, shall file a statement with the department that declares its intent to be the employer of motion picture production workers, pursuant to this section, by January 15, 2007. The statement shall include identification of all affiliated entities as defined by this section.

(3) Any motion picture payroll company that quits business shall:

(A) Within 10 days of quitting business:

(i) File with the director, a final return and report of wages of its workers, as required by Section 1116.

(ii) File all statements required by this subdivision.

(B) Within 30 days of quitting business, notify the motion picture production companies and allied motion picture services companies, with respect to which they have been treated as the employer of the motion picture production workers, of its intent to quit business.

(4) The director may prevent a motion picture payroll services company that fails to file a timely statement, as required by this section, from being treated as an employer of motion picture production workers, for a period not to exceed the period for which the statement is required.

(5) Any statement filed by a motion picture payroll services company pursuant to this subdivision shall be applied to all affiliated entities of the motion picture payroll services company in existence at the time the statement is filed.

(c) For each rating period beginning on or after January 1, 2007, in which an employer operating as a motion picture payroll services company obtains or attempts to obtain a more favorable rate of contributions under this section in a manner that is due to deliberate ignorance, reckless disregard, fraud, intent to evade, misrepresentation, or willful nondisclosure, the director shall assign the maximum contribution rate plus 2 percent for each applicable rating period, the current rating period, and the subsequent rating period. Contributions paid in excess of the maximum rate under this section shall not be credited to the employing unit's reserve account.

(d) (1) On and after January 1, 2007, whenever a motion picture payroll services company creates or acquires a motion picture payroll services company, or acquires substantially all of the assets of a motion picture payroll services company, the created or acquired motion picture payroll services company shall:

(A) Constitute a separate employing unit, notwithstanding Sections 135.1 and 135.2.

(B) Have its reserve account and rate of contributions determined in accordance with subdivision (e).

(C) Notify the department of the entity being created or acquired and the nature of its affiliation to that entity.

(2) The department may promulgate regulations requiring a motion pictures payroll services company, prior to the creation or acquisition of a motion picture payroll services company that will

be an affiliated entity, to seek the approval of the department to apply the provisions of this section to the created or acquired entity.

(e) When a motion picture payroll services company transfers all or part of its business or payroll to another motion picture payroll services company, as defined by this section, the reserve account attributable to the transferor shall be transferred to the transferee motion picture payroll services company, and the transferee's rate of contribution shall be determined in accordance with Section 1052. The transferee shall notify the department within 15 days of the transfer of the business or payroll.

(f) For purposes of this section, the following definitions apply:

(1) "Affiliated entity" means any one or more motion picture payroll services company or companies that are united by factors of common ownership, management, or control as prescribed by Section 1061.

(2) "Allied motion picture services company" means any person engaged in an industry closely allied with, and whose work is integral to, a motion picture production company in the development, production, or postproduction of a motion picture, excluding the distribution of the completed motion picture and any activities occurring thereafter, and who hires from the same pool of craft and guild or union workers, actors, or extras as a motion picture production company.

(3) "Motion picture" means a motion picture of any type, including a theatrical motion picture, a television production, a television commercial, a music video, or any other type of motion picture regardless of its theme or the technology used in its production or distribution.

(4) (A) "Motion picture payroll services company" means any employing unit that directly or through its affiliated entities meets all of the following criteria:

(i) Contractually provides the services of motion picture production workers to a motion picture production company or to an allied motion picture services company.

(ii) Is a signatory to a collective bargaining agreement for one or more of its clients.

(iii) Controls the payment of wages to the motion picture production workers and pays those wages from its own account or accounts.

(iv) Is contractually obligated to pay wages to the motion picture production workers without regard to payment or reimbursement by the motion picture production company or allied motion picture services company.

(v) At least 80 percent of the wages paid by the motion picture payroll services company each calendar year are paid to workers associated between contracts with motion picture production companies and motion picture payroll services companies.

(B) If the director determines that any employing unit is operating as a motion picture payroll services company but is failing to comply with any of the provisions of subparagraph (A) of paragraph (4), the employing unit is subject to determination of the employer-employee relationship pursuant to this code. When the director's ruling becomes final, the director may preclude the employing unit from being classified as a motion picture payroll services company pursuant to this section for up to three years from the date of the determination.

(5) "Motion picture production company" means any employing unit engaged in the development, production, and postproduction of a motion picture, excluding the distribution of the completed motion picture and any activities occurring thereafter.

(6) "Motion picture production worker" means an individual who provides services to a motion picture production company or allied motion picture services company and who, with regard to those services, is reported under this part as an employee by the motion picture payroll services company. An individual who has been reported as an employee by the motion picture payroll services company, without regard to the individual's status as an employee or independent contractor, shall be the employee of the motion picture payroll services company for the purposes of this code throughout the contractual period with the motion picture payroll services company.

(7) "Wages" shall have the same meaning given the term in Article 2 (commencing with Section 926) of Chapter 4 of Part 1 of Division 1, and shall include residual payments.

(g) If the director determines that an entity does not meet any of the requirements specified by this section, the director shall give notice of its determination to that entity pursuant to Section 1206. The notice shall contain a statement of the facts and circumstances upon which the determination was made. The entity so noticed shall have the right to petition for review of the director's determination within 30 days of the notice, as provided in Section 1222.

(h) The director shall prescribe the form and manner of the statements and information required to be filed or reported by this section.

(i) On or before December 31, 2010, the department may report to the Legislature regarding the impact of this section on the Unemployment Insurance Fund and the entertainment industry.

(j) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 2012, deletes or extends that date.

SEC. 2. Nothing in this act shall be construed to change existing law as it relates to employing units who do not elect to be considered a motion picture payroll services company pursuant to Section 679 of the Unemployment Insurance Code.

Approved _____, 2006

Governor